The 15th April, 1980

No. 11(112)-80-3 Lab/5731.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Shri Sanatam Dharam Mahabir Dal (Regd.), Karnal:—

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER,
LABOUR COURT,
ROHTAK.

Reference No. 67 of 1976
between

SHRI PARSHOTAM SADHER, WORKMAN AND THE MANAGEMENT OF M/S. SHRI SANATAM DHARAM MAHABIR DAL (REGD.), KARNAL.

Present:

Shri U. S. Dalal, along with the workman concerned.

Shri Surinder Kaushal for the respondent-management.

AWARD

The file of the reference No. 67 of 1976 was received in this court on remand by the order of the Hon'ble Supreme Court, dated 31st March, 1979 for taking this case on the file and to proceed with *denovo* in accordance with law.

The brief facts of the case preceding this order of remand are that the Governor of Haryana was pleased to refer the disdispute between the workman Shri Parshotam Sadhar and the management of Shri Sanatam Dharam Mahabir Dal (Regd.), Karnal in exercise of powers under clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, for adjudication to this Court,—*vide* order No. ID/KNL/284-A-76, dated 10th August, 1976. My learned predecessor framed the preliminary issue "Whether the Sanatam Dharam Mahabir Dal is an industry", while deciding the same against the workman held that the institution did not fall in the definition of an industry as given in section 2(J) of the Act and the reference was, therefore, bad in law and the workman was not entitled to any relief. The workman's Civil Writ Petition and the petition for special leave to appeal in the Supreme Court were rejected by the High Court of Punjab and Haryana resulting in the Civil Appeal No. 2215 of 1978 to the Supreme Court in consequence of which the present order of remand by the Supreme Court. On the receipt of the file remanded notices were issued to the parties for 31st May, 1979 when the parties appeared. The management submitted an application on 23rd May, 1979 giving additional facts in reference No. 67 of 1976 and on 31st May, 1979, they filed anotner application for permission to amend their written statement. The workman filed his reply to the application on 2nd June, 1979 and the parties also argued on the application for amendment. The amendment was allowed to be made by the management by the order of learned predecessor, dated 5th June, 1979. The workman filed his rejoinder to the amended written statement on 19th June, 1979 and the following issues were framed :—

(1) Whether the Sanatam Dharam Mahabir Dal Hospital, Karnal, is an industry as defined in section 2(j) of the Industrial Disputes Act ?

(2) If so, as per reference ?

(3) Whether the refraction section of the Hospital has been closed? If so, to what effect ?

(4) Whether the workman remained gainfully employed after the termination of his services ? If so, for how much period and for how much gains and to what effect ?

And on the next date of hearing, i.e., 25th June, 1979, the workman made a statement that he did not want to adduce further evidence on issue No. 1 and the case was adjourned for the evidence of the management to be recorded on 13th July, 1979. On 13th July, 1979, five witnesses of the management were recorded. On 23rd July, 1979, the remaining three witnesses were examined and their statements were recorded. The case was fixed for remaining evidence of the management on 27th August, 1979 and the statement of Doctor Amrit Lal, General

Secretary of the respondent was recorded as MW-1 and the same was closed on 24th September, 1979. The workman adduced his evidence on 3rd October, 1979 partly, and the remaining evidence on 12th October, 1979. The same was closed on 12th October, 1979. I have carefully gone through the evidence on the record and heard the learned representatives for both the sides and decide the issues as under :—

ISSUE NO. 1:

On behalf of the workman three witnesses were examined. WW-1 Shri S. S. Kabutra, Dental Surgeon of the respondent who is a retired Dental Surgeon from the Haryana Government. He stated that denture were prepared in the hospital. They charge Rs. 100 as all full set upper and lower. He received 45 per cent of the cost after deduction the cost. 10 per cent was received by his Assistant and remaining 45 per cent is credited in the income of the hospital. WW-2 Shrimati Shanta Chaudhary, Staff Nurse of the respondent hospital stated that artificial eyes were provided to the patient in need of the same. Rs. 5 were charged for providing one eye. Rs. 25 were charged as donation from the patient admitted in the hospital. We were maintaining a private ward. Rs: 50 were charged as operation fee, Rs 5 (Rs. five only) for the room, Rs. 15 were charged as sterilization fee beside Rs. 50 were charged as operation fee. Rs. 25 per patient were charged extra for admission in case of overcrowding. Employees working in the theatre received 10 per cent of the operation fee. The workman himself deposed as WW-3 in the same terms. Dr. Amrit Lal was examined as MW19 on behalf of the management who is General Secretary of the Dal since June, 1976 and remained its President since 1963 to 1976. He stated that Dal was a registered body consisting 31 members of the working committee. In addition managing committee there are 50 volunteers to assist the Sanatan Dharam Mahabir Dal on various occasions. The purpose of the Dal is to serve the public. There are only 8 to 10 employees for the purpose of running the hospital set up by the Dal. Rest of the work was done by the volunteers and members of the Committee without charging any wages for that. Volunteers and the members of the committee go before the public from time to time and collect donations and Government also grant some donation as well as Municipality and the Central Government and it is not systematic organized service but on the basis of voluntary and on the honorary basis. Industry has been defined under section 2(J) of the Industrial Disputes Act—

(a) Where (i) systematic activity; (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial); (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, i.e., making on a large scale of (*prasad* or food) *prima facie*, there is an industry in that enterprise;

(b) Absence of profit notice or gainful objective is irrelevant, be the venture in the public joint or private or other sector,

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relations.

(d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

I am to decide this issue in the light of observation and the ratio of the ruling contained in the Supreme Court judgement in the Banglore Water Supply and Sewerage Board, 1972-I-LLJ-349. In the case of Banerji 1953 S.C.R. 302, discussed in the main judgement, industry has been defined in section 2J and explained in this case has a wide import. All the indica of "industry" are packed into the judgement which condenses the conclusion tersely to

hold that "indusrties" will cover "branches of work that can be said to be analogous to the carrying out of a trade or business". A close up of the content and contours of the controversial words "analogous" etc., which are thus explained are the prescient words and branches of work that can be said to be analogous to the carrying out of a trade or business. The same judgement has negatived the necessity for profit motive and included charity impliedly, has virtually equated private sector and public sector operations and has even perilously hinted at professions being trade. In this perspective, the comprehensive reach of "analogous" activities must be measured. The similarity stressed relates to "branches of work", and more the analogy with trade or business is in the "carrying out" of the economic adventure. So the parity is in the *modus operandi*, in the working not in the purpose of the project nor in the disposal of the proceeds but in the organisation of the venture, including the relations between the two limbs, viz., labour and management. If the mutual relations, the method of employment and the process of co-operation in the carrying out of the work BEAR CLOSE RESEMBLANCE TO THE ORGANIZATION, METHOD, REMUNERATION, relationship of employer and employee and the like, then it is industry, otherwise not. This is the kernal of the decision. An activity oriented, not motive based, analysis.

The decision given in the Hospital Mazdoor Sabha 1961-I-LLJ has also been considered. The observation positive is set in these terms :—

> ".....as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material service to the community at large or a part of such community with the help of employees is an undertaking Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organized or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organized or arranged the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which section 2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of hospitals in question", are charitable institutions industries. "The first is one where the enterprises, like any other, yields profits but they are siphoned off for altrustic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at lower cost, to the indigest needy who are priced out of the market. The third is where the esablishment is oriented on a humane mission fulfilled by men who work, not because they are paid wages but because they share the passion for cause and drive job satisfaction from their contribution. The First two are industries the third not."

All industries are organized, systematic activity, charitable adventures which do not possess this feature of course are not industries. The second species of charity is really an allotropic modification of the first. If a kind hearted businessman or high minded industrialist or service minded operator hires employees

like his non-philanthropic counter parts and, in cooperation with them produces and supplied goods or services to the lowly and the lost the needy and the ailing without charging them any price or receiving a negligible return people regard him as of charitable disposition and his enterprise as a charity. But them, so fare as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial minded employer. Both exact hard work. Both pay similar wages, both treat them as human machine cogs and nothing more. The material difference between the commercial and the compassionate employers is not with reference to the workman but with reference to the recipients of goods and services. Charity operates not vis-a-vis the workman in which case they will be paying a liberal wage and generous extras with no prospect of strike. To qualify for exemption from the definition of "industry" in a case where there are employers and employees and systematic activities and production of goods and servicts, we need a totally different orientation, organization and method which will stamp on the enterprise the imprint of commerciality. Special emphasis in such cases must be placed on the fact of employer-employee relations. If a phalanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who whole-heartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, not for wages but for sharing into cause and its fulfilment, then the undertaking is not "industrial".

The principles layed down for explanation the term in Banerji case are given as under:—

(a) Where (i) svstematic activity, (ii) organized by co-operation between employer and employee the direct and substantial element is commercial. (iii) for the production and or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial blish, i.e., making, on a large scale, or prasad or (food) *prima facie,* there is an "Industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint private or other sector.

(c) The true focus in functional and the decisive test is the nature of the activity with special emphasis on employer employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

Their Lordsips overruled Safdarjung, Solicitors' case, Gymkhana, Delhi University, Dhanrajgiriji Hospital and others ruling whose ratio runs covered to the principles enunciated above, and Hospital Mazdoor Sabha was held rehabilitated.

In the light of evidence on the record and the observations of their Lordships of the Supreme Court, I hold that the Sanatam Dharam Mahabir Dal Eye Hospital is an industry engaged in systematic activities analogous to trade or business. The absence of profit motive or gainful objective is immaterial and irrelevant. I, therefore, decide Issue No. 1 against the management and in favour of the workman.

ISSUE NO. 2 and 3:

The case of the management is that there was negligible work in the refraction section. Only 10-12 cases of refraction were attended in the hospital during every working day. The refraction was, therefore, stopped and the post of refractionist was abolished which resulted in the termination of services of the workman. Shri G. K. Bhatnagar was examined on behalf of the management, who deposed that along with him there were two other doctors who did the job of eye testing, operation, examination of the eves who were all qualified doctors. The refraction work encludes eye check up

correcting the vision by means of glasses and ascertaining the whether a person is having optical error in his eyes. Eye Specialist is a qualified refractionist. Only 20 to 30 refraction cases were exmined daily in the hospital and it depended upon patient to patient how much time refraction takes. Some time 20 minutes are taken whereit may take 2 minutes. These three slips shown to him mark "A" to "C" one was issued by Shri A. K. Saksena and mark "B" and 'C' were issued by Shri Batnagar on 15th November, 1978 and on 28th April, 1979 respectively. He further stated that if we three doctors stopped doing refraction work, than of course appointment of refractionist would be justified and it was wrong to suggest that the refractionist post was abolished in order to accommodate kith and kin of the member of the Mahabir Dal and in spite of refractionist the post has been re-designated as Eye Assistant. The other witness examined for the management was Dr. Amrit Lal, General Secretary of the respondent Dal who stated that the workman concerned joined the respondent hospital as refractionist on 11th October, 1973,—*vide* letter Exhibit MW-9/1. This appointment was made on the basis of application Exhibit MW-9/2. Shri Parshotam Sadher submitted his joining report Exhibit MW-9/3. Shri Parshotam Sadher had shown his un-willingness to reside in the hospital premises. It was made clear to him that he will not be paid house rent as the hospital was prepared to give accommodation to him. The workman concerned filed an application under payment of wages Act for payment of house rent,—*vide* Exhibit MW-4/1. This application was rejected by the authority. During last of 1975 and in the beginning of 1976 only 10 to 12 cases of refraction were attended. He used to go to the hospital daily, to supervise the work of the hospital. Shri Parshotam Sadher, the workman concerned was always found sitting idle. His work engaged him only for two hours. Shri Jai Parkash, the then cashier and Shri Khem Chand the then store incharge suggested that the refraction work should be stopped. The application is Exhibit MW-9/4. A meeting of the managing body was convined on 12th January, 1976 and produced the proceedings register and photostat copy of the proceedings dated 11th January, 1976 is Exhibit MW-9/5 where in it was resolved that the work of refraction was too little and does not call for a whole time refractionist and the refraction department was decided to be closed. The termination order was issued to the workman concerned,—*vide* MW-9/6, terminating the service with effect from 22nd January, 1976 (A.N.). After his termination no refractionist was employed till today as the job was not required in the hospital. In his cross-examination Dr. Amrit Lal has stated that Shri A. K. Saksena was appointed as eye Assistant to help the eye specialist in outdoor and in door operation work after advertisement. The application was received which is in our record. He was interviewed and his appointment letter is on the record. He was qualified as B.Sc. Orthoptist, Operation theatre Assistant, Refractionist. Refraction was not stopped in the hospital in any stage. The hospital had also not been closed. No notice of termination was given to the workman concerned. There is no agreement specifying the date of termination of the workman. No compensation was paid to him at the time of termination. No notice of closing down the refraction department was given. It has also been admitted by the witness that the workman concerned was incharge of the store of the hospital for about 8½ months and the register during that period was being maintained by him. Shri Saxena was appointed as Eye Assistant and had the same qualification as the workman concerned had.

In his statement recorded as WW-5 the workman concerned has reported that his services were terminated on 22nd January, 1976 only on two hours notice,—*vide* Exhibit MW-9/6 and the real cause of termination was that at the time of his appointment the management agreed to provide him with accommodation unfurnished, but after his joining, they did not provide the same. He filed an application under Payment of Wages Act before the authority at Panipat for

house rent. He used to do the work of operation theatre Assistant and store in-charge alongwith the work of refractionist. The demand notice is Exhibit W-1 was served on the management after his termination. Mr. A. K. Saxena was appointed in his place who was not more highly qualified then the workman concerned. The workman gave 4 applications to the management requesting them to provide him the accommodation and it was denied by them that at the time of his appointment it was made clear to him that he will receive Rs. 270 per month if he does not live in accommodation provided by the management. The first application for accommodation was made by him after three months of his appointment. On his representation he further stated that the management neither refused nor provided him the accommodation. He admitted that his relations became strained because the management was not providing him accommodation.

From the evidence of the management it is clear that refraction in the hospital was carried on and the post of refractionist was abolished only to get rid of the workman concerned. Shri A. K. Saxena who was appointed after the termination of Mr. Parshotam Sudher was doing the same work which the workman concerned used to do. The relevant portion of Section 25-FFF reads as under:—

> "25-FFF. (1) Where an undertaking is closed down for any reason whasoever every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall subject to the provisions of sub-section 2 be entitled to notice and compensation in accordance with the provisions of Section 25-F, as if the workman had been retrenched.
>
> Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer the compensation to be paid to the workman under cl. (b) of Section 25F, shall not exceed his average pay for three months."

The word "undertaking" as used in its ordinary sense connotting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section. The question has to be decided on the facts of each case. Reading down the expression, in the context of Section 25-FFF it must mean a separate and distinct business or commercial or trading or industrial activity. It cannot comprehend an infinite simally small part of a manufacturing process. In LLIJ-I-1979 Page-I Avon Services Pvt. Ltd., and Inudstrial Tribunal, Haryana, Faridabad and others their Lordships of Supreme Court have held" It cannot be said that painting section was a recognized sub-section eligible for being styled as a part of the undertaking. If such mini-classification is permitted it would enable the employer to flout Section 25-F with impunity.

On this very ground the refraction section of Sanatam Dharam Mahabir Dal Eye Hospital cannot be deemed to be a separate and distinct business or commercial or trading or industrial activity as a part of the undertaking. Therefore this is a case of retirement and not the case of closure. In State Bank of India v. N. Sundara Money, 1976-3-S.C.R. 163-Krishna Iyer Judge "retrenchment" under section 2(oo) to ascertain the elements which constitute retrenchment. It was observed as under:—

> "A break down of Section 2(oo) unmistakably expands the semantics of retrenchment. Termination for any reason whatsoever are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart,

the substance is decisive. A termination takes place where a term expires either by the active step of the matter or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer; but the fact of termination howsoever produced. May be the present may be a hard case, but we can visualise abuses by employers by suitable verbal devices, circumventing the armour of Section 25F and S. 2(oo). Without speculating on possibilities, we may agree that "retrenchment" is no longer *terra incognita* but are covered by an expensive definition. It means "to end, conclude, cease."

The workman was not paid any compensation at the time of his termination and the condition precedent for an order of retrenchment was not fulfilled under section 25-F. In B. M. Gupta and State of West Bengal and other reported in I-LLJ-1979 Page 168 his Lordship of the Calcutta High Court has held:—

"If the conditions precedent for an order of retrenchment under Section 25-F are not fulfilled the order of retrenchment is not effective at all, and the same is void *ab initio* and the relationship between the employer and the employee is not affected by such void retrenchment order and the employee continues to be in service despite the purported order of retrenchment.

The Supreme Court decision in the Hospital Mazdoor Sabha case, (1960-I-L.L.J. 251), has specifically laid down the principle that the requirements of section 25-F are mandatory requirements and failure to comply with the said condition precedent makes the order of retrenchment invalid and inoperative in law. If an order is invalid and inoperative in law, it cannot be made operative by awarding some compensation later on."

In the light of the above discussion I hold that the termination order passed against Shri Parshotam Sadher the workman concerned is not justified and not in order. Issues No. 2 & 3 are decided aganst the management.

ISSUE No. 4:—

The management has alleged that the workman was gainfully employed and was running a shop in the name and style of M/s. Karnal Optics, Vision Clinic. The management produced Shri Jai Kishan, son of Shri Parma Nand shopkeeper who deposed that he knew Shri Parshotam Sadher who was running the optician shop at Karnal with the name and style of M/s. Karnal Optics in shop No. 20 close to the shop is a Dhaba where he used to go generally. He was running the shop for the last 3½ years but he could not say how much he was earning. The rent of the shop was around about Rs. 250/- per month. He told in his cross-examination that he did not know whether his son used to take egg from M/s. Ashok Poultry Farm and he had quarrel with Shri Ashok and he did not also know if the workman concerned was a friend of Ashok Poultry Farm proprietor.

Another witness examined for the management was the photographer Shri Dwarka Dish Kumar who took the snap mark "A" and mark "B" and produced the original negatives of the same which are Exhibit MW-2/1 and MW-2/2. Snap Exhibit MW-2/1 was taken by him on 3rd November, 1978 and the other taken on 6th November, 1978. He verified that both the snaps of which mark 'B' and mark 'C' are the proofs were in respect of Shop No. 20 of Karnal Optics and person who was standing inside the shop was the person who is standing in the court Shri Parshotam Sadher. One MW-5 Shri Devinder Kumar, son of Shri Kishan Dass testified that the person standing in the shop at point 'B' in snap "C" was he himself. He got his eye tested

by Shri Parshotam Sadher who was was present in the Court. After testing his eye sight Shri Parshotam Sadher issued a slip Exhibit MW-5/1. He was charged Rs. 21/- for eye sight testing.

The workman in his evidence produced Shri Gopal Singh, son of Shri Daulat Singh, Dhaba Owner who stated that he did not know any Shri Jai Kishan running the shop. He had never bought any thing from the above named shopkeeper. He did not maintain any account of purchase of goods for his shop. He has further stated that shop No. 20 was used to be by Shri Parshotam Sadher and by his father. He stated that he could not tell whether spectacles or gogals were sold in shop No. 20. He had never visited his shop. He had never seen spectacle or gogals being delivered by the workman or by his father. He could not tell whether the shop belongs to Shri Parshotam Sadher or his father. The shop was being run by the workman etc. for the last 3 years and he knew the workman since starting of the shop. He further stated that he did not know if any other business was carried out by the workman except this shop. Another witness examined on behalf of the workman was his father Shri Roshan Lal, who was a retired Foreman. He stated that he was running a shop for repairing spectacle and gogals and the shop was registered one and he did not remember whether a certificate was issued by the inspector under the Shops and Commercial Establishment Act. The shop was mortgaged to him by the owner for Rs. 10,000/-. The photostat copy of the deed is Exhibit WW-4/A. The workman who was his son has no concern with the shop. He was running the shop since 1976. To the court question "Can you explain me what work includes in the work of foreman ?" The witness replied the work of foreman encludes the inspection carpentary, fitter, blacksmith and welding. It is correct to say when he retired from his service he only knew the work of blacksmithy carpentary. It was also correct to say that repair of gogals and spectacle did not fall in the category mentioned above. Before opening this shop he had never worked the repairing of spectacle and gogal through out his life. He admitted that he started this work because his son Parshotam Sadher knew this job and he was out of job on those days.

From the perusal of the documents on the file and oral evidence on the record it has been established beyond doubt that Shri Parshotam Sadher was running the shop under the name and style of M/s. Karnal Optics. The nature of work required for running includes the technical know how and training before embarking on such an adventure which a retired foreman who had no knowledge or specialisation in this field have not in all probability have started this business, and it was actually his son, the workman concerned who was running the shop. Though his father might be sitting their in his absence. Prior to the execution of the mortgage deed in favour of his father in respect of the shop, the workman got a rent note entered in his name for same shop on 3rd March, 1976 which is clear from the statement of MW-7 the son of the petition writer. The mortgage deed executed in favour of his father is dated 29th January, 1977 and this was done in order to bring him under the exemption to the plea of gainfully employment. This issue is, therefore, decided against the workman and in favour of the management.

In the Hindustan Steel Ltd., V/s. A. K. Roy 1970-I-LLJ-228, the supreme court have referred to the history of the relief by an Industrial adjudication whenever an order of termination of service was set aside in the following words:

> "There can be no doubt that the right of an employer to discharge or dismiss an employee is not longer absolute as it is subject to serve restrictions. In cases of both termination of service and dismissal industrial adjudication is competent to grant relief, in the former case on the ground that the exercise of power was mala fide or colourable and in the latter case if it amounts to victimization or unfair labour practice or is in violation of the principles of natural justice or is

otherwise not legal or justified. In such cases a tribunal can award by way of relief to the concerned employee either reinstatement or compensation. In the earlier stages the question whether one or the other of the two reliefs should be granted was held to be a matter of discretion for the Tribunal: See Western India Automobile Association V. Industrial Tribunal, Bombay and other (1949-LLP-245) and others (1952-II-LLJ. 557). The view then was that to lay down a general rule of reinstatement being the remedy in such cases would itself fetter the discretion of the Tribunal which has to act in the interests of industrial harmony and peace and that it might well be that in some cases imposition of the service of a workman on the unwilling employer might not be conducive to such harmony and peace."

In the case reported in Assam Oil Company Ltd., V/s. its workmen of Charottar Gramodhar Sahakari Mandal Ltd. *v.* (Civil Appeal No. 382 of 1966) decided on 14th August, 1967). Doour Dulung Tea Estate V/s. Its workman (Civil appeal No. 516 of 1966, decided on 26th October, 1967) and Ruby General Insurance Company Ltd., V.P.P. Chopra (1970-I-LLJ. 63). These are, however, illustrative cases where an exception was made to the general rule. No hard and fast rule as to which circumstances would in a given case constitute an exception to the general rule can possibly be laid down as the Tribunal in each case, keeping the objectives of indusrtial adjudication in mind, must in a spirit of fairness and justice confront the question whether the circumstances of the case require that an exception should be made and compensation would meet the ends of justice."

The workman has admitted in his statement while he was cross-examined that his relation with the management were strained on account of his filing an application under the Payment of Wages Act before the Authority at Panipat. Since the relationship between the management and the workmen concerned was far from being cordial, the order for his reinstatement in the circumstances shall not be expedient and rectified. The Courts refused to reinstate the workman in the similar circumstances and awarded compensation in lieu of reinstatement. Admission on the part of the workman for his strained relation with the management constituted a sufficient ground in the absence of specific allegation from side of the management for refusing reinstatement.

The order for termination of the service of Shri Parshotam Sadher is set aside being illegal and unjustified on the grounds mentioned while deciding Issue No. 2 & 3. He has also remained gainfully employed since the termination of his services till today. In normal circumstances the workman would have been entitled to reinstatement with full back wages and with continuity of service, but as he had strained relation with the managment he will not be thrust upon the management unwilling employer and also taking into the consideration the fact of being in gainful employment. I order the management to pay the workman a sum of Rs. 6,000 (Rs. six thousand only) exgratia amount in lieu of reinstatement and back wages.

I answer the reference while returning the same in these terms.

The 31st March, 1980.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 873, dated the 8th April, 1980.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under Section 15 of Industrial Disputes Act, 1947.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Rohtak.

H. L. GUGNANI,
Secretary to Government, Haryana,
Department.